

artificially drive the price of the service higher to attempt to recoup costs in the license period.

As discussed earlier, GTE believes the construction period for initial construction should be extended, while at the same time requiring initial service earlier. Accordingly, GTE believes a ten-year license period with a renewal expectancy is more appropriate for this type of service, coupled with a five-year initial total system construction requirement and an eighteen month initial service requirement.

**Absent Congressional authority to use competitive bidding,
GTE supports a non-contingent lottery, with strict anti-speculation
requirements.**

Although GTE generally favors a license assignment process that ensures licenses are awarded to the most legally, technically, and financially qualified applicants who will build systems to serve the public interest, the FCC has adopted a policy to avoid using comparative hearings. The FCC notes they are extremely costly, time consuming, and delay implementation of innovative services for the public. (NPRM, ¶135) Thus, absent Congressional authority to use competitive bidding, lotteries are the only other option left for use by the Commission. If lotteries are used for LMDS, GTE supports a similar type of lottery program to the one GTE recommended in the PCS Docket. This program should be designed to ensure that financially and technically qualified parties apply and should minimize speculation in licenses or applications. There GTE argued for:

- Strict financial³⁰ and technical qualifications
- Minimum construction commitments and deadlines
- Short filing windows to help weed out copy-cat filings of the application mills
- Strict anti-trafficking rules
- Significant filing fees³¹

GTE is pleased that in the Notice the FCC has incorporated almost all of these points for LMDS. GTE believes the FCC should go further in minimizing speculation for LMDS licenses. As noted in the IVDS Declaratory Order at note 7: "[S]peculative applications are applications filed by entities that have no real interest in developing and operating communications systems. Such applications slow processing and delay initiation of service to the public." (citations omitted) GTE recommends the FCC also require an LMDS applicant

30 To strengthen the financial showing, GTE urges the FCC to require a performance bond for LMDS covering the construction costs and operating expenses for one year for the total system. The Commission has required strict financial showing for other services. In the Cellular service for renewals, the FCC provided for posting of performance bonds, irrevocable letters of credit or cash escrows, 7 FCC Rcd 719, 724 (1992)..In the Mobile Satellite Service the FCC adopted similar strict financial requirements, 6 FCC Rcd 4900, 4912. Performance bonds are often used by other federal agencies such as the Department of Interior and its Bureau of Land Management to ensure activities are performed. See 30 U.S.C. §§1259 & 1305 and 30 C.F.R. §942.800.

31 See GTE's PCS Comments (Nov. 9, 1992) at 55-58.

who proposes to deliver video services to demonstrate a firm commitment for access to programming.³²

Similarly, GTE recommends against using a "contingent winners" approach for lotteries. By initially ranking all applicants, the FCC converts the lottery into the worst parts of the comparative hearing process. Just as in comparative hearings where significant resources are spent trying to find minor items that will cause one applicant to appear more qualified than another, this contingent winner's approach provides strong incentives for the next applicant on the list to commit significant resources to find minor items that will knock the winner out of the winner's circle. If the FCC does not determine the next potential winner until after the first selectee's application is ruled defective, there is less of an incentive for any party to commit significant resources challenging the initial winner, since there is no guarantee that such a challenge will result in a license award to the challenger.

GTE also supports the FCC's determinations to require "letter perfect" filings. GTE does not support "post-card" lotteries since these would encourage speculators. GTE also agrees that, as with Cellular licensing, only one

³² The FCC mandated a similar commitment requirement in the 800 MHz ATG Service. There the commitment had to be a contract with an airline or airline organization. The FCC stated:

We are . . . requiring air-ground applicants to establish a written agreement to provide service with at least one airline or airline organization. These agreements must be entered into prior to the time the application is filed with the Commission and must be submitted with the application. This requirement is intended to further our objective of discouraging speculative applicants that do not actually plan to build a system themselves or that are unable to build one. 5 FCC Rcd 3861 at ¶82.

A commitment for access to programming for a video LMDS offering is the same as a commitment from an airline for 800 MHz ATG Service.

application per market area should be filed by each applicant. (NPRM, ¶45) GTE also supports a strengthened financial showing requirement, except that the Commission should lower the minimum service requirement to 75% of the population and allow a five-year period to complete construction.³³ Initial service (i.e., the first cell) should be operational in 18 months. GTE also believes a one-day filing window will help dissuade speculators and application mills. However, the various markets should be phased as was done with Cellular, where specific market areas had their filing dates separated by a reasonable time period. Letter perfect filings need time to be prepared and a phased approach to filings will help conserve Commission and industry resources, while still introducing the LMDS offerings on a timely basis. GTE also believes the Commission has selected the appropriate fee classification. (NPRM, ¶50)

The Pioneer's Preference for Suite 12 is warranted.

The FCC has tentatively concluded that Suite 12 is deserving of a Pioneer's Preference in either New York or Los Angeles. As GTE noted in its

33 A three-year construction requirement to serve a minimum population is appropriate only if the FCC reduces the threshold to lower than 50% of the population. There is also an issue of whether the equipment is commercially available. A compressed construction period with a large geographic coverage requirement could overtax available manufacturing capacity. In addition, the FCC should also adopt a liberal waiver standard if an applicant is proposing a new equipment design that is more spectrally efficient than current equipment. Such new technology equipment may have a longer-than-three-year interval to design, fabricate, test, and deploy. The FCC should not let an arbitrary three-year rule cut-off incentives for more spectrum-efficient technologies in LMDS.

Reply Comments³⁴ to the FCC's Tentative Decision in the PCS Docket,³⁵ Suite 12's developmental work meets the standards established by the FCC for Pioneer's Preference. This is in contrast to the claims made by some alleged pioneers in that proceeding. GTE supports the award of a pioneer's preference to Suite 12 for its work in developing this new service and because the proposed service rules are substantially based on that work.

CONCLUSION

As modified by these Comments, GTE supports the FCC's decision to redesignate the 28 GHz band to accommodate LMDS technology and launch a new service.

Respectfully submitted,

Of Counsel

James R. Hobson
Jeffrey O. Moreno
Donelan, Cleary, Wood & Maser, P.C.
1275 K. Street, N.W.
Suite 850
Washington, D.C. 20005-4078

March 16, 1993

GTE Service Corporation, on
behalf of its domestic, affiliated,
telephone, equipment and
service companies

By: 

Daniel L. Bart
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036
202-463-5212

Its Attorney

³⁴ See GTE Reply Comments, GEN Docket 90-314 (Mar. 1, 1993) at 2, n.2.

³⁵ 7 FCC Rcd 7794.